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Ex Parte

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Annual Report and Analysis of Competitive Market Conditions with Respect to Mobile Wireless, Including Commercial Mobile Services, WT Docket No. 17-69

Ms. Dortch:

CCA's recent filing on the state of competition in the mobile market refuses to acknowledge what the American public knows to be true: the U.S. mobile marketplace is effectively – and intensely – competitive.¹ While Chairman Pai has characterized the U.S. wireless market as “extremely competitive [and] delivering unparalleled value to consumers,”² CCA dismisses such conclusions. It ignores that the vast majority of Americans are experiencing falling prices and burgeoning choices. Instead, CCA myopically focuses on remote, less populated areas in an effort to steer the Commission away from a finding of competition. While the industry continues to expand its reach throughout the country, there is no doubt that most Americans are benefitting from fierce competition. Nearly 96 percent of Americans can choose from three or more facilities-based mobile broadband providers.³ That fact, along with many others in the record, demonstrate that by any reasonable measure the U.S. mobile market is robustly competitive.

¹ Comments of Competitive Carriers Association, WT Docket No. 17-69 (May 8, 2017) (“CCA Comments”).

² “CNBC Transcript: FCC Chairman Ajit Pai Speaks With CNBC’s ‘Squawk on the Street’ Today,” <http://www.cnbc.com/2017/02/22/cnbc-transcript-fcc-chairman-ajit-pai-speaks-with-cnbc-squawk-on-the-street-today.html> (Feb. 22, 2017 12:29 PM).

³ *Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, Nineteenth Report, 31 FCC Rcd 10534, ¶ 39, at Chart III.A.2 (2016) (“*Nineteenth Mobile Competition Report*”).

A quick recap of the record in this year's Mobile Competition proceeding shows that consumers are at the center of a hotly competitive mobile marketplace:

- **Falling prices.** The wireless Consumer Price Index (CPI) fell 11.4 percent between March 2016 and March 2017, declining 7 percent in just one month from February 2017 to March 2017.⁴ Since 2009, wireless CPI has fallen more than 23 percent.⁵
- **Exploding Demand/Usage.** Americans used 13.72 trillion megabytes of data in 2016, 35 times the amount used in 2010.⁶ Mobile data traffic is expected to grow five-fold from 2016 by 2021.⁷
- **Robust Investment.** Wireless providers have invested more than \$200 billion in network improvements over the past 7 years.⁸ In 2016 alone, carriers invested more than \$26 billion.⁹

Yet CCA's comments pay no attention to market performance data like this, other than a brief reference to growing consumer demand, and CCA does not consider how the mobile market is serving consumers.

CCA recycles its previous complaints about the market structure, but competition policy demands that any rigorous review account for providers' conduct (*i.e.*, market performance) as well. AEI Scholar Jeffrey Eisenach has questioned the "structuralist" analysis as applied to broadband, noting that "[m]odern competition analysis ... recognizes that large numbers of competitors are not necessary to achieve competitive results."¹⁰ Instead, direct market evidence

⁴ See Comments of CTIA, WT Docket No. 17-69 (May 8, 2017) ("CTIA Comments"); Comments of Verizon, WT Docket No. 17-69, at 4-5, 9 (May 8, 2017) ("Verizon Comments").

⁵ See *id.* at 9-10.

⁶ See CTIA Comments, at 8.

⁷ See *id.* at 9.

⁸ See *id.* at 28.

⁹ CTIA Press Release, "Americans' Wireless Data Usage Continues to Skyrocket" (May 9, 2017), <https://www.ctia.org/industry-data/press-releases-details/press-releases/americans-wireless-data-usage-continues-to-skyrocket>.

¹⁰ Jeffrey Eisenach, *Broadband Competition in the Internet Ecosystem*, AEI Economic Studies, at 8 (Oct. 2012), https://www.aei.org/wp-content/uploads/2012/10/-broadband-competition-in-the-internet-ecosystem_164734199280.pdf ("Eisenach"). In 2009, the last time the Commission made a finding as to whether the mobile market is effectively competitive, it observed that "market structure is only a starting point for a broader analysis of the status of competition based on the totality of circumstances, including the pattern of provider conduct, consumer behavior, and market performance." *Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, Thirteenth Report, 24 FCC Rcd 6185, ¶ 109 (2009).

is a far better indicator of a competitive market.¹¹ And in the mobile market, there is ample direct evidence of a robustly competitive market, one in which “output is rising, prices are falling, quality is increasing, firms are making large investments in new technologies and infrastructures, [and] rivalry is intense....”¹² Here, the Commission should find that the mobile market is effectively competitive.

Driven by this intense competition, the United States is poised to lead the world in 5G – but even here, CCA wants to slow competitive forces, investment, and innovation. CCA asserts its opposition to announced transactions involving mid- and high-band frequencies “before their potential for 5G services is fully realized.”¹³ It says that allowing some carriers to acquire millimeter spectrum would foreclose or minimize other carriers’ ability to deploy 5G.¹⁴ But carriers, including CCA’s own members, have said they plan to deploy 5G on a variety of spectrum bands, including 600 MHz, 700 MHz and 2.5 GHz. The potential for 5G will be realized if the Commission permits companies to use and acquire spectrum that best leverages their network architectures. CCA even argues that the FCC should review an optical fiber transaction “to ensure all carriers are afforded access to these critical network inputs.”¹⁵ The Commission, of course, has no jurisdiction over bare facilities. The Commission has noted time and again that “[o]ur statutory duty is to protect efficient competition, not competitors.”¹⁶ These efforts to slow the march toward 5G should be roundly rejected.

CCA correctly observes that there are pockets of the country with limited or no mobile service, and Verizon supports initiatives to promote buildout in rural and remote areas that remain unserved. In fact, Verizon works with partner carriers to deliver 4G LTE in rural or underserved areas through its LTE in Rural America (LRA) program. The LRA program covers more than 226,000 square miles across 172 rural counties in 17 states. Overall, 94 percent of *rural* Americans are covered by two or more facilities-based mobile broadband providers, and 80 percent of rural Americans are covered by at least three service providers.¹⁷ Notably, CCA recognizes the value inherent in providing service where people live, stating that “a proposed

¹¹ See, e.g., Gerald R. Faulhaber, Robert W. Hahn & Hal J. Singer, *Assessing Competition in U.S. Wireless Markets: Review of the FCC’s Competition Reports*, 64 Federal Communications Law Journal 319 (2012), available at <http://www.repository.law.indiana.edu/cgi/viewcontent.cgi?article=1616&context=fclj> (last visited June 7, 2017).

¹² Eisenach, at 8.

¹³ CCA Comments, at 45.

¹⁴ *Id.* at 49.

¹⁵ *Id.* at 50.

¹⁶ *Business Data Services in an Internet Protocol Environment; Technology Transitions*, Report and Order, 32 FCC Rcd 3459, ¶ 290 & n.741 (2017) (citing *Bell Atlantic Mobile Systems, Inc. and NYNEX Mobile Communications Company*, Memorandum Opinion and Order, 12 FCC Rcd 22280, ¶ 16 (1997)); see also *SBC Communications Inc. and AT&T Corp. Applications for Transfer of Control*, Memorandum Opinion and Order, 20 FCC Rcd 18290, ¶ 151 (2005) (“The Commission’s ‘statutory duty is to protect efficient competition, not competitors.’”).

¹⁷ *Nineteenth Mobile Competition Report*, at Chart III.A.5.

initial buildout benchmark should be based on population benchmarks, rather than geography.”¹⁸ For his part, CCA member T-Mobile’s CEO John Legere recently pledged to solve geographic coverage issues: “[w]e secured a nationwide footprint that will enable us to bring low-band spectrum to consumers across every single inch of the country.”¹⁹ This would mean that much of the remaining 6 percent of the population in rural America could gain a third mobile broadband provider. Rural consumers, moreover, benefit from the nationwide competitive market. Verizon’s pricing is the same nationwide (with limited exceptions for special offers in specific geographies), so rural consumers get the same competitive offers as their urban counterparts. To that end, the Commission has previously found that, even though there are fewer mobile operators in rural areas, “there is no evidence in the record to indicate that this structural difference has enabled providers in rural areas to raise prices above competitive levels or to alter other terms and conditions of service to the detriment of rural consumers.”²⁰ The fact that some areas have fewer providers should not determine whether the U.S. mobile market as a whole is effectively competitive.

Ultimately, CCA wants the FCC to follow the lead of the past Administration and sidestep the only reasonable conclusion about competition in the U.S. mobile market. Citing the ongoing development of 5G and IoT, CCA argues that “[d]uring this period of transition, the Commission should refrain from broad, sweeping characterizations of the state of competition in the mobile wireless market.”²¹ This proposed approach is wrong. It is time for the FCC to find what we *all* can readily see: the U.S. mobile market is robustly competitive.

Sincerely,



¹⁸ CCA Comments at 30.

¹⁹ Thomson Reuters StreetEvents, Edited Transcript of TMUS earnings conference call or presentation 24-Apr-17 8:30pm GMT (Apr. 26, 2017), <https://finance.yahoo.com/news/edited-transcript-tmus-earnings-conference-031850589.html>.

²⁰ *Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, Twelfth Report, 23 FCC Rcd 2241, ¶ 110 (2008).

²¹ CCA Comments at 5.